Supreme Court, U.S.
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No. 96-1999

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

SONJA INDRELAND MCLAUGHLIN,
Petitioner,

v.

WASHINGTON STATE BAR ASSOCIATION, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a United States District Court has subject matter jurisdiction to review a decision of the Washington State Supreme Court in a lawyer discipline proceeding.

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case arises from a lawyer disciplinary proceeding in the State of Washington. Petitioner filed a complaint in the Federal District Court for the Eastern District of Washington.

On March 16, 1995, the Honorable Wm. Fremming Nielsen entered an order dismissing the complaint. Petitioner then filed a motion for a new trial and for relief from clerical mistake. On May 31, 1995, Judge Nielsen entered an order denying the motion for new trial (or reconsideration) and granted in part the motion for relief from clerical mistake.

Petitioner is a member of the Washington State Bar Association. Defendants are the Washington State Bar Association, its Executive Director (Dennis P. Harwick), its Chief Disciplinary Counsel (Leland G. Ripley), and a lawyer member of its disciplinary department (Jean Kelly McElroy).

This action arises from a lawyer discipline proceeding brought by the Washington State Bar Association against Petitioner pursuant to the Rules for Lawyer Discipline (RLD) as adopted by the Supreme Court of Washington.

Following a hearing, the Hearing Officer concluded, among other things, that in the course of a judicial campaign, Petitioner had made statements which were false and which were made with reckless disregard of their truth or falsity in violation of rule 8.2(a) of the Rules of Professional Conduct (RPC) (Conclusion of Law 9). He concluded that in that judicial campaign, Petitioner had made pledges or promises of conduct in office in violation of RPC 8.2(b) and RLD 1.1(k) because they violated rule 7(B)(1)(c) of the Code of Judicial Conduct (CJC) (Conclusion 9). He concluded that Petitioner had made statements that failed to maintain the dignity appropriate to judicial office in violation of RPC 8.2(b) and RLD 1.1(k) because they violated CJC Canon 7(B)(1)(a) (Conclusions 10 and 11).

Following review by the Disciplinary Board of the Washington State Bar Association, the Board ordered that Petitioner receive a letter of censure and a reprimand.

Petitioner sought discretionary review of that decision by the Washington Supreme Court pursuant to RLD 7.3. On October 6, 1992, the Washington Supreme Court entered an order denying the motion for discretionary review.

REASONS FOR DENYING THE PETITION

I. PETITIONER HAD ADEQUATE OPPORTUNITY IN THE STATE PROCEEDINGS TO RAISE HER CONSTITUTIONAL CHALLENGES.

Petitioner argues that the United States District Court should have jurisdiction over Petitioner's complaint because she has been denied the right to a judicial proceeding to hear her claims in state court. Petitioner has no factual basis for that argument. As Tweedledee said in *Through the Looking Glass*:

> . . . if it was so, it might be; and if it were so, it would be; but as it is'nt, it ain't.

Petitioner's argument turns on the single question of whether the document issued by the Supreme Court of Washington denominated "Order" in the matter of Sonja I. McLaughlin is an order of a state court issued as a result of a judicial proceeding. (Copy of the Washington Supreme Court Order is at Appendix A). If so, then it may only be reviewed by the Supreme Court of the United States on certiorari to the state courts, and not by means of an original action in a lower federal court. *MacKay v. Nesbett,* 412 F.2d 846 (9th Cir.), *cert. denied,* 396 U.S. 960 (1969).

Petitioner says flatly that it is not: "there is no final decision of any state court" (Petitioner's brief, p. 12, 23); "The very document used as a basis for the District Court decision, the so-called 'Order' of the Supreme Court of Washington denying Petitioner's petition for discretionary review, showed on its face that no file exists in the Supreme Court of Washington to which a writ of certiorari could be directed." (Petitioner's Supplementary Appendix, p. 1).

Petitioner denies that the October 6, 1994 order was the result of a judicial proceeding despite the facts. First, the Washington Rules for Lawyer Discipline are rules

adopted by the Washington Supreme Court which governed the disciplinary proceeding commenced against Petitioner. The Washington State Bar Association acts as "an arm of the [supreme] court" in carrying out those rules. *In re Schatz,* 80 Wn.2d 604, 607, 497 P.2d 153 (1972); *Campbell v. WSBA,* 263 F. Supp. 991 (1967). Second, under the RLDs, Petitioner had recourse as of right to the state Supreme Court, *which she exercised.* RLD 7.3(a) provides:

> Decisions of the [Disciplinary] Board . . . which do not provide for suspension or disbarment are subject to review by the Supreme Court only through discretionary review. Discretionary review will be accepted only:
>
> (1) If the decision of the Board is in conflict with a decision of the Supreme Court; or
>
> (2) If a significant question of law is involved; or
>
> (3) If there is no substantial evidence in the record to support a material finding of fact upon which the decision of the Board is based; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

In order to deny her petition, the Supreme Court *necessarily* was required to review the case to determine whether it met one of the requirements of RLD 7.3(a)(1)-(4). The reason that the petition was denied is that the law is well settled in Washington that the conduct engaged in by Petitioner is prohibited by the Rules of Professional Conduct, as adopted by the Supreme Court, and that the prohibitions are constitutional. *See, In re Kaiser,* 111 Wn.2d 275, 759 P.2d 392 (1988).

The proceeding brought against Petitioner is similar to that in *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed. 206

(1983) in which the District Court issued a *per curiam* decision dismissing Feldman's petition for waiver of a rule to permit him to sit for the bar examination. This Court held that such a proceeding was in fact a judicial proceeding.

> When the claim is made in a state court and a denial of the right is made by judicial order, it is a case which may be reviewed under Article III of the Constitution when federal questions are raised and proper steps taken to that end, to this Court.

Feldman, at 479, quoting *In re Summers,* 325 U.S. 561, 65 S.Ct. 1307, 89 P.2d 1795 (1945).

Petitioner apparently elected to disregard the judicial significance of the October 6, 1992 order, and decided not to seek a writ of certiorari from that decision in a timely manner. *See* Petition for Writ of Certiorari, p. 7. She now seeks improper federal court interference in a state court disciplinary matter. Her petition should be denied.

II. FEDERAL COURT ABSTENTION IN STATE BAR DISCIPLINARY PROCEEDINGS IS A WELL ESTABLISHED PRINCIPLE OF LAW.

Petitioner argues that the holding in this case, that the District Court lacks subject matter jurisdiction, is "unlawfully based on case law precedent." Petitioner's Brief, p. 10. Specifically, she contends that the Ninth Circuit holding in *MacKay v. Nesbett, supra,* is applied "in blanket fashion without giving any legal or factual reasoning." That holding is:

> . . . orders of a state court relating to the admission, discipline, and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state court, and not by means of an original action in a lower federal court.

412 F.2d at 846.

This holding reflects the fact that Federal District Court abstention from involvement in state bar disciplinary proceedings has long been the rule. It is based on the principles enunciated in *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) and restated in *District of Columbia Court of Appeals v. Feldman, supra* at 482: ". . . a United States District Court has no authority to review final judgments of a state court in judicial proceedings."

Petitioner argues that *MacKay* stands for "nothing more than a restatement of statutory federal law" (Petitioner's brief, p. 16), referencing 28 U.S.C. 2283, which provides that a District Court may not grant an injunction to stay proceedings in a State court. However, *MacKay* and *Feldman* stand for something far broader than that, which is that District Courts may not interfere with a state court's interest in regulating and disciplining the members of its Bar.

Petitioner cites *Feldman, supra,* and *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982) as having "superseded" the holding in *MacKay*. However, her interpretations of the holdings in both of those cases is based on her erroneous conclusion that the issues raised in her complaint were not the subject of a judicial proceeding in the State Court. The facts show, as discussed above, that Petitioner's claims were presented to the Washington Supreme Court, and that in that judicial proceeding, they were denied.

CONCLUSION

Petitioner labors under the misapprehension that her claims arising out of the Washington disciplinary proceeding were not the subject of a judicial proceeding. If that were the fact, it might provide a basis for her claim to be heard in the District Court. But, "as it isn't, it ain't".

The Supreme Court should deny the Petition for Writ of Certiorari.

Dated this 18th day of July, 1997.

Respectfully submitted,

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APPENDIX

APPENDIX

APPENDIX A

THE SUPREME COURT OF WASHINGTON

Bar No. 7192

IN RE: SONJA I. MCLAUGHLIN,
an Attorney at Law.

ORDER

This matter came before Department I of the Court on its October 6, 1992, Motion Calendar on attorney Sonja McLaughlin's motion for discretionary review of discipline imposed in the form of a reprimand and censure. Department I having considered the motion and the files herein;

Now, therefore, it is hereby

ORDERED:

That the motion for discretionary review is denied.

DATED at Olympia, Washington this 6th day of October, 1992.

/s/ Fred H. Dore
Chief Justice